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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 89

FIRST NATIONAL STEAMSHIP COMPANY, ET AL., PETITIONERS

v.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, FORMERLY THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION IN OPPOSITION

OPINIONS BELOW

The District Court delivered no opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 22–28) is not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on February 17, 1941 (R. 28). The petition for a

writ of certiorari was filed on May 16, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, after the effective date of Section 203 (a) of the Merchant Marine Act of 1936 (c. 858, 49 Stat. 1985, 1987, 46 U. S. C., Supp. V § 1113), an action may be instituted against the United States Shipping Board Merchant Fleet Corporation.

STATUTE INVOLVED

Section 203 (a) of the Merchant Marine Act of 1936 (c. 858, 49 Stat. 1985, 1987, 46 U. S. C., Supp. V § 1113) provides as follows:

> SEC. 203 (a) The United States Shipping Board Merchant Fleet Corporation shall cease to exist and shall stand dissolved. All the records, books, papers, and corporate property of said dissolved corporation shall be taken over by the Commission. All existing contractual obligations of the dissolved corporation shall be assumed by the United States. Any suit against the dissolved corporation pending in any court of the United States shall be defended by the Commission upon behalf of the United States, under the supervision of the Attorney General, and any judgment obtained against the dissolved corporation in any such pending suit shall be reported to Congress in the manner pro-

vided in section 226, title 31, United States Code, for reporting judgments against the United States in the Court of Claims.

STATEMENT

On October 6, 1938, petitioners commenced an action in the United States District Court for the District of Columbia against the United States Shipping Board, the United States Shipping Board Merchant Fleet Corporation, Daniel C. Roper, as Secretary of Commerce of the United States, and the United States Maritime Commission (R. 1–10).[1] By an order of April 3, 1939

[1] The complaint (R. 1–10) alleged that at some undisclosed time it was agreed between petitioners and the United States Shipping Board (hereinafter called the "Board") and the United States Shipping Board Merchant Fleet Corporation (hereinafter called the "Fleet Corporation") that petitioners would operate three vessels owned by the United States and would pay certain expenses in connection with such operation; that deposits of $538,048.23 would be made by petitioners with the Board and Fleet Corporation; that if the vessels were offered for sale and if petitioners were the successful bidders, the deposit would be applied to the purchase price, but if the vessels were not offered for sale or petitioners were not the successful bidders or if the Fleet Corporation withdrew the vessels from petitioners' custody, the deposits would be returned; that the Fleet Corporation would pay "all owners fixed charges" including insurance; and that the costs of certain improvements to the vessels would be borne "by the defendants" (R. 3–4). It was alleged further that the vessels were entrusted to petitioners in May, June, and September 1920 and that the deposits were made; that in November 1920 one of the vessels suffered heavy sea damage and that petitioners were "thus automatically deprived of commercial custody and control of said vessel"

(R. 11), the District Court dismissed the action as to all defendants except the Fleet Corporation. On April 5, 1939, a motion (R. 12) was filed by the Fleet Corporation to dismiss the action as to it upon the ground that the complaint failed to state a cause of action and upon the further ground that the court lacked jurisdiction over the Fleet Cor-

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(R. 6); that on December 23, 1920, the "United States Shipping Board or the Fleet Corporation" (R. 5) notified petitioners that unless certain contracts were signed, the vessels would be repossessed; and that on January 5, 1921, the Board or Fleet Corporation did repossess the vessels (R. 4–6). The complaint states further (R. 7) that, after the repossession, the petitioners made demand upon the Shipping Board and the Fleet Corporation for return of the deposit, $538,048.23, and for reimbursement of all sums of money expended by petitioners for the benefit of the Board and the Fleet Corporation, $96,208.03, or a total of $634,256.26; that the Shipping Board and Fleet Corporation refused to pay, remit or refund the money demanded, and that in the year 1925 suit was filed in the Court of Claims for the recovery of such sums. It was alleged further (R. 7–9) that thereafter, on October 7, 1935, because the issues "had become confused as the result of the actions" of certain Government officers and because of the "dire financial straits" of petitioners, petitioners were compelled to negotiate with the Attorney General and to accept $250,000 in settlement, whereupon the suit in the Court of Claims was dismissed, as were certain counterclaims filed by the United States. The action in the instant case is to recover the balance due ($384,256.26) with interest at 6% from January 5, 1921, until paid, together with interest at 6% on $250,000 from January 5, 1921, to October 7, 1935. Recovery was also sought of "an amount to be determined by this Court as compensation for the damages, losses, and injuries sustained by complainants by reason of the wilful and deliberate neglect and refusal" on the part of the defendants to refund the money (R. 10).

poration and the subject matter of the action. On January 18, 1940, the motion was overruled without opinion (R. 19). Upon appeal, this order was reversed and the cause was remanded to the District Court with instructions to dismiss the complaint (R. 28).

The court below held that, under Section 203 (a) of the Merchant Marine Act of 1935, *supra,* the charter of the Fleet Corporation was revoked and annulled, that the United States was substituted for the Fleet Corporation on the contractual obligations of the latter, and that therefore the exclusive forum for such suits as the present one was the Court of Claims. The court further held that Section 203 (a), so construed, was valid because the assumption by the United States of the contractual obligations of the Fleet Corporation afforded "a sufficient remedy, due process of law, and just compensation for any private property which has been taken for public use" (R. 27).[2]

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[2] There is now pending in the Court of Claims a suit by the same petitioners against the United States (Court of Claims Case No. 44103) in which the petition is substantially identical to that in the instant case. In addition, pursuant to Senate Resolution 327, 76th Cong., 3d Sess., testimony is now being taken before a Commissioner of the Court of Claims in order to report to the Senate "(1) whether there were any sales of or valid contracts to sell the subject vessels to said companies and whether the companies breached any contracts and thereby damaged the United States Shipping Board to the extent of $384,256.26 * * * and (2) whether the payment to said companies on October 7, 1935, was a payment of all the moneys due and owing said com-

ARGUMENT

It is settled that a dissolved corporation is not suable in the absence of some statutory authority for the prolongation of the corporation's life. *Chicago Title & Trust Co.* v. *Wilcox Building Corp.*, 302 U. S. 120, 125. The only questions in this case, therefore, are (1) whether Section 203 (a) of the Merchant Marine Act of 1936 was intended to dissolve the Fleet Corporation; and (2) if so, whether the Act is violative of the Fifth Amendment because it remits petitioners to suit under the Tucker Act, which confers no jurisdiction of actions sounding in tort and prohibits an award of interest on contract claims prior to the date of judgment, in the absence of an express provision for interest in the contract. Judicial Code, Sections 145, 177; 28 U. S. C. §§ 250, 284.[3]

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panies existing on December 31, 1925 * * *" (Congressional Case No. 17764).

[3] The Merchant Marine Act of 1936 does not waive the Tucker Act limitations upon the suability of the United States. Cf. *United States* v. *Shaw*, 309 U. S. 495, 505.

Petitioners assert (Pet. 5–6) that the decision below was predicated upon the premise that, under the Act, the United States assumed all the obligations of the Fleet Corporation, including an obligation to pay interest on claims of the character here sued upon as well as obligations of the Corporation sounding in tort, and contend that, since the Court of Claims may hold otherwise, petitioners may be deprived of their constitutional rights unless this petition is granted. Petitioners' statement as to the premise of the decision below is without foundation and the purpose in making such a representation is not apparent, unless it be to lay the basis for a like contention in the pending proceeding in the Court

1. Section 203 (a) of the Merchant Marine Act of 1936 effected a complete dissolution of the Fleet Corporation. The statute expressly provides that the Fleet Corporation "shall cease to exist and shall stand dissolved." As the court below observed, "it is hard to think of language more definite in meaning" (R. 26). Certainly, if it was intended that the Fleet Corporation be dissolved pursuant to the "ordinary procedure" (R. 26) of the District of Columbia Code, such intention would not have been left to inference.[4] Cf. e. g., Act of

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of Claims. The court below clearly held that, under the Merchant Marine Act of 1936, petitioners have only such remedies as are available against the United States under the Tucker Act for claims arising out of contractual obligations and the taking of private property for public use.

[4] The dissolution provisions of the District of Columbia Code (D. C. Code, Tit. 5, c. 13, secs. 391–408), are entirely incompatible with the special provisions of Section 203 (a). After dissolution of the Fleet Corporation and distribution of its property to the Maritime Commission pursuant to Section 203 (a), there could be no efficacy in a court decree of dissolution and appointment of a receiver as provided for in the District of Columbia Code, *supra*. Judicial process could not reach property which even before 1936 was property of the United States. *Emergency Fleet Corp.* v. *Western Union Telegraph Co.*, 275 U. S. 415, 424. Although assets, while under control of the "suable" Fleet Corporation, may have been subject to execution, they became, on their transfer to the non-suable Maritime Commission, immune from execution. *Federal Housing Authority* v. *Burr*, 309 U. S. 242, 250–251. A court decree would be ineffective to distribute property already distributed by statute, or to vest trustees with authority to wind up affairs that had already been wound up. Moreover, if the provisions of the District of Columbia Code were intended to apply, it would

February 12, 1931, c. 120, 46 Stat. 1088, 1091, 5 D. C. Code, sec. 303. The express provision with respect to the defense of "pending" suits against the "dissolved corporation" plainly manifests the intention of Congress not to prolong the Corporation's life for purposes of any other suits. Section 203 (a), if valid, thus precludes the institution of any action against the Fleet Corporation after the effective date of the Act. Cf. *Johnson* v. *Fleet Corporation,* 280 U. S. 320.

2. Section 203 (a), as thus construed, does not deprive petitioners of any rights under the Fifth Amendment. The United States has expressly assumed all contractual obligations of the Fleet Corporation, an assumption which, as the court below correctly concluded, includes any obligation for a taking under eminent domain. Cf. *Jacobs* v. *United States,* 290 U. S. 13, 16. It is true that no interest would be recoverable in an action in the Court of Claims for breach of contract in the absence of an express agreement to pay interest. But even in actions between private parties, interest relates "merely to an incidental item of damages" (*Klaxon Co.* v. *Stentor Elec. Mfg. Co., Inc.,* No. 741, October Term 1940, decided June 2, 1941) and the right to interest as an element of

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have been unnecessary to provide in Section 203 (a) for continuation of pending litigation, or, for that matter, for suits against the United States on the contractual obligations of the Fleet Corporation. See D. C. Code, Tit. 5, c. 13, §§ 406–408.

damages for breach of contract may be enlarged or withdrawn after the execution of the contract. Cf. *Klaxon Co.* v. *Stentor Elec. Mfg. Co., Inc., supra; Funkhouser* v. *Preston,* 290 U. S. 163, 167–168. It is also true that no damages would be recoverable in the Court of Claims in an action sounding in tort. But the allegations of fact in the complaint disclose no cause of action in tort; at most they assert a claim for alleged breach of contract (see Complaint, par. 20, R. 7). The conclusory language of the prayer for relief (R. 10) is obviously immaterial.

The validity of Section 203 (a) may also be rested on the power of Congress to grant or withdraw its consent to be sued. That consent to suit against the United States may be withdrawn is well settled. *De Groot* v. *United States,* 5 Wall. 419, 432; *Lynch* v. *United States,* 292 U. S. 571, 581–582; *Coleman* v. *United States,* 100 F. (2d) 903 (C. C. A. 6th); *Huff* v. *United States,* 22 F. Supp. 309 (E. D. Ky.). Since the extent of immunity, if any, of governmental corporations depends solely on the intent of Congress (*Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U. S. 381, 389) there is no basis for the application of a different rule in the case of such corporations. That the Fleet Corporation was originally organized under the laws of the District of Columbia is immaterial. It was a governmental agency and was given corporate form merely for administra-

tive reasons. *Skinner & Eddy Corp.* v. *McCarl,* 275 U. S. 1, 7–8. The power of Congress to disregard the corporate form and extend to the Corporation the privileges and immunities of the United States cannot be doubted. Cf. *Emergency Fleet Corp.* v. *Western Union,* 275 U. S. 415.[5]

3. No question of importance is involved. No other action is pending against the Fleet Corporation which was instituted subsequent to the effective date of the Merchant Marine Act of 1936 and, so far as we are aware, no one other than petitioners has ever sought to maintain such an action.

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[5] It should be added that, although the Act was passed June 29, 1936, it was not to become effective until 30 days after a majority of the members of the Maritime Commission had taken the oath of office (49 Stat. 2017, 46 U. S. C. § 1246), which was on October 26, 1936. United States Maritime Commission Report to Congress for Period Ended October 25, 1937, p. 2. The Act is thus comparable to statutes restricting former statutes of limitations and is valid. *Koshkonong* v. *Burton,* 104 U. S. 668, 675; *Terry* v. *Anderson,* 95 U. S. 628, 632. See also *Sohn* v. *Waterson,* 17 Wall. 596; *Antoni* v. *Greenhow,* 107 U. S. 769, 774. Petitioners have not alleged that the time was unreasonably short, nor have they shown that they were unable to commence an action within that period.

CONCLUSION

The decision of the court below is correct. There is no conflict and no question of importance is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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